

I have reviewed the Industrial Stormwater General Permit (ISGP) and offer the following comments.

### **General Comments**

During the workshop and hearing for this permit conducted in Mount Vernon, Ecology staff repeatedly stated that their agency did not have the resources to conduct inspections or enforcement actions. Staff repeatedly said that permit compliance would have to be a “good faith effort” on the part of permittees. This concerns us greatly. If Ecology does not have adequate resources to properly implement this aspect of the NPDES permitting authority, then it must turn this part of NPDES program back to the EPA for implementation.

There are a number of provisions in the ISGP that require Ecology oversight in order to be sure that the waters of the state are not being degraded. These include granting and monitoring of mixing zones, the development and approval of Stormwater Pollution Prevention Plans (SWPPPs), the discharge of pollutants to impaired waterbodies, and general compliance with the Clean Water Act and the State Water Quality Standards. As will be discussed further below, Ecology is abrogating its Clean Water act authority if it cannot properly implement the requirements of the law regarding the above mentioned issues. Perhaps Ecology should simply not grant mixing zones, for example, until such a time as it has the resources necessary to adequately assign and monitor them.

### **Inconsistencies between fact sheet and permit**

Page 15 of the Fact Sheet (Permit Status and Summary of Compliance with the Previous Permit) states that the permit does not require the permittee to conduct sampling and analysis. But Section S4, on page 19 of the permit states that all facilities will be required to monitor quarterly for a minimum of 8 quarters. We recognize that the permit is the regulatory document, but the Fact Sheet is an important companion and this inconsistency should be remedied.

### **S2 Coverage Requirements**

- S2B1 states that facilities currently covered under the existing ISGP will be covered under the new permit. There does not seem, however to be a requirement that these facilities provide Ecology with updated SWPPPs. Certainly, even existing facilities should still be required to update their SWPPPs periodically to ensure that new BMPs are taken into consideration and that the SWPPP follows new guidance from Ecology in the Stormwater Manual. Updating a SWPPP once every permit cycle seems barely adequate from a water quality perspective and not too onerous for the permittees.
- S2B2 states “Those with pending applications are not required to submit a new application. However, additional information may be required...including the identification of receiving waterbody form ...and a copy of the stormwater pollution prevention plan.” It seems that all facilities should provide this information, so we suggest that the language be changed from “may be required” to “will be required.”

### **S3D Discharge Discharges to Impaired Waterbodies**

S3D2 states that facilities discharging to impaired waterbodies that fail to comply with effluent limits are placed on a compliance schedule. The schedule given on page 18 does not seem to have an end point. What happens in Year Five when the facility has reviewed all actions taken,

the results of actions taken, and there are no more actions to take? Is the facility then deemed in compliance? Does Ecology decide to finally take enforcement action? Can Ecology even take an enforcement action, as it seems that this schedule would mean that enforcement is not allowed if the facility is working within the schedule? Is the facility allowed to violate water quality standards for 5 years whilst implementing BMPs and treatment? This aspect of the permit is vague, leaving compliance open-ended and undefined. Such language is not acceptable for any waterbody, but is especially unacceptable for 303d listed waterbodies.

### **S3E: Mixing Zones**

The permit authorizes standard mixing zones as defined in the Water Quality Standards. We have a number of concerns about the legality of blanket granting of mixing zones.

- The fact sheet very correctly states that mixing zone considerations are “very site-specific and difficult for stormwater discharges.” The permit recognizes this difficulty but then grants blanket mixing zones that do not take into account any of the detailed information that Ecology states is necessary in making mixing zone determinations. If the size and efficacy of a mixing zone is determined by site-specific conditions, how can Ecology ensure that any one of these mixing zones does not have a “reasonable potential to cause a loss of sensitive or important habitat, substantially interfere with the existing or characteristic uses of the waterbody, result in damage to the ecosystem, or adversely affect public health” as is required in WAC 173-201A-100(4)?
- S3E1 lists number of conditions for granting a mixing zone, but fails to state how such conditions will be met or verified. Whose responsibility will it be to ensure that the provisions of WAC 173-201A-100 are met? Certainly it would not be fair to the permittees nor would it be prudent from a scientific perspective, to require permittees to provide documentation that their mixing zone “does not have reasonable potential to result in a loss of sensitive or important habitat, interfere with the exiting characteristic of the water body, result in damage to the ecosystem” etc. Assuming that most permittees do not have the resources or expertise necessary to make such determinations, then will Ecology make such determinations? If so, then Ecology must review each application, conduct background research necessary and then provide specific approval on a case by case basis. This is the only way that the substantive requirements of the WAC can be met.
- All permittees should apply for a mixing zone under this new permit, not just new facilities. Automatically granting mixing zones to existing permit holders flies in the face of the public notice provisions associated with NPDES permits. Any other permit holder, such as an oil refinery, would have a mixing zone authorization specifically written into its permit, thereby allowing the public the opportunity to comment on this provision. In this permit, however, there is no way for members of the public to know if a given facility already has a mixing zone or to make comment on the appropriateness of a mixing zone for the facility.

### **S4. Monitoring Requirements**

- **S44** states that the storm event sampled must be preceded by 24 hours of no precipitation. The sampling would be much more meaningful if there were a longer interval between the previous storm event and the one being sampled. We suggest 72 hours.

- **S4A**

**Hardship Fee Reduction:** This permit includes a provision allowing a modification of monitoring requirements for facilities that have received a hardship fee reduction. While we commend Ecology for trying to be fair to small businesses. We hope that this will not be at the cost to water quality. Specifically how will Ecology, which maintains that it does not have the resources to adequately implement the provisions of this permit, make the determination that stormwater from such a site will “pose no significant environmental risk?”

**Visual Monitoring**

We support the use of visual monitoring to augment water quality sampling. A well-informed and documented visual monitoring program can give Ecology a lot of information about the site and its stormwater management. We are concerned, however, about the lack of uniformity and documentation for the visual monitoring requirements in this permit. To ensure consistency between facilities and even from inspection to inspection within the same facility, visual monitoring should be documented on a common form, developed by Ecology. Given that many facilities do not have dedicated environmental compliance officers, Ecology must take the time to tell SWPPP responsible staff what to look for in a visual inspection. Simply stating that one should take note of “floating materials, suspended solids, oil and grease, visible sheen, discoloration, turbidity, odor, etc.” is not adequate. Ecology should develop a visual monitoring report form that clearly calls out not only potential contaminants, but also documents BMPs are in place and functioning (swales in good shape, process chemicals under cover, etc). As well, such reports should include notation of recent weather. All visual monitoring events should require dated photo documentation.

Lastly, these monitoring reports should be filed with Ecology. This is especially important once the facility is no longer taking stormwater samples. The current requirement file the results of visual monitoring with the SWPPP for the facility is laughable given that, at Ecology’s admission, well over half the facilities covered by the last permit could not even locate their SWPPPs.

- **S4A2 Benchmark Values**

Please explain the use of Benchmark Values in this permit. It appears that they are inconsistent with the state Water Quality Standards. For example, Section S4A3 give the benchmark values for Total Copper and Total Lead as 63.6 and 81.6 ug/L, respectively. Is this for total recoverable metals? The Water Quality Standards limits are expressed as the dissolved fraction for each. The calculation for total recoverable metals does not appear to be included in the permit. How is the public to know whether the Benchmark Values are equal to or less than the Water Quality Standards and whether compliance with the Water Quality Standards has been achieved if they are not expressed in like terms?

Turbidity is another concern. The Benchmark Value for turbidity is 25 NTU. However, the water quality standards limit turbidity to Class AA waters to 5 NTU over a background of 50, or an increase of no more than 10% if background is more than 50. In class B waters, turbidity is limited to 10 NTU. How does the state justify a blanket turbidity value, regardless of background values or class of receiving water? Clearly, in most instances attainment of the Benchmark Value for turbidity will result in a violation of water quality criteria.

### **S5: Reporting and Record Keeping**

As is stated above, permittees should send their visual monitoring reports, along with photo documentation, to Ecology. This should be done similarly to the submittal of Discharge Monitoring Reports.

### **S6: No Exposure**

S6D states that a no exposure certificate is automatically granted to all facilities that apply within 60 days of application unless Ecology denies the request in writing. This is not appropriate. A no exposure certification must be made by Ecology, based on detailed analysis of the site, including a site inspection by ecology staff. Then no exposure must be granted in writing. Simply allowing no exposure to anyone who submits an adequate form is no guarantee that water quality is being protected. Again, if Ecology does not have the resources to properly implement this provision, then there should be no certificates granted until the agency can find the resources.

### **S7 Compliance with Standards**

S7C states that a violation due to a stormwater treatment system that does not properly function during a storm that exceeds its design criteria will not constitute a violation. This permit provision is illegal under the Clean Water Act, which requires effluent control adequate to ensure compliance with water quality standards. Ecology should act to ensure that facilities have adequate controls in place to ensure that water quality standards are not violated rather than excusing facilities ahead of time for violating standards.

### **S9. Stormwater Pollution Prevention Plans (SWPPPs)**

It is clear from both the Fact Sheet and the permit that SWPPPs will play a major role in ensuring facility compliance with water quality laws. The Fact Sheet states that as of last year, only half of the facilities covered under this permit could even locate their SWPPP and even fewer had an up to date SWPPP that was fully implemented. Further, the Fact Sheet states that not more than 25% of the facilities could be considered to be in full compliance with permit BMP requirements. So, out of over 1200 facilities, more than 600 could not find their SWPPPs and fewer than 300 facilities were actually in compliance! This is, quite frankly, shocking.

Given this information, I was most interested to read the new SWPPP requirements in the modified permit. We find that facilities are not required to have Ecology review and approve their SWPPPs. Without required review and approval from Ecology, the SWPPPs, how will we remedy this situation? Ecology must review and have approval authority over SWPPPs to assure that they have been completed and provide adequate controls for each site. SWPPPs should not simply be an exercise that Ecology requires facilities to engage in. They should be detailed documents with enforcement consequences. If Ecology does not have the resources to review and approve SWPPPs, then requiring them is next to meaningless.

Lastly, I would like to comment about what I perceive to be a lax attitude towards enforcement of the law from Ecology on this matter. At the public workshop and hearing I attended, Ecology staff referred to needing monitoring data in order to gain a better sense of the nature of stormwater and to assess whether stormwater is a problem. In fact, self-monitoring is an important aspect of the NPDES permitting program. The purpose of monitoring as detailed in the permitting program and throughout settlement negotiations that resulted in this permit, is to assess compliance with the law. To hear Ecology staff tell the regulated community that

enforcement will most likely not happen was disheartening. We expect rigorous enforcement of this permit, which has great implications for water quality as it affects over 1,200 facilities throughout the state. If Ecology does not want to conduct such enforcement or does not have the resources to do so, then it should either raise permitting fees, seek help from the legislature, or turn the NPDES program back over to the EPA.

Thank you for the opportunity to comment on this permit.